



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 27 2007

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Jill Holtzman Vogel, Esquire
Holtzman Vogel PLLC
98 Alexandria Pike
Suite 53
Warrenton, VA 20186

Re: MUR 5652
Terrell for Senate
Justin Schmidt, in his official capacity as treasurer

Dear Ms. Holtzman Vogel:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, on April 5, 2005 the Federal Election Commission found reason to believe that your clients, Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(f), 434(a)(6) and 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(B), 104.3(a) and (b), and 104.5(f), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations of 2 U.S.C. §§ 441b(a), 441a(f), 434(a)(6) and 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(B), 104.3(a) and (b), and 104.5(f) have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

You may also request an oral hearing before the Commission. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Terrell for Senate and Justin Schmidt, in his) MUR 5652
6 official capacity as treasurer)
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8 **GENERAL COUNSEL'S BRIEF**

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10 **I. STATEMENT OF THE CASE**

11 This matter arose from a Federal Election Commission ("Commission") audit of Terrell
12 for Senate, the principal campaign committee of Suzanne Haik Terrell during her 2002 race for
13 the United States Senate from Louisiana, conducted pursuant to 2 U.S.C. § 438(b).¹ Following
14 the audit, Terrell for Senate was provided an opportunity to respond to the audit staff's findings
15 and ultimately did not contest the Commission's findings set forth in the Final Audit Report. *See*
16 Final Audit Report (approved by the Commission on August 4, 2004 and incorporated into this
17 Brief by reference). Based on the audit, the Commission found reason to believe that Terrell for
18 Senate and Justin Schmidt, in his official capacity as treasurer, ("the Committee") violated
19 2 U.S.C. §§ 441b(a), 441a(f), 434(a)(6) and 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(B),
20 104.3(a) and (b), and 104.5(f).²

21 Based on the following analysis, the General Counsel is prepared to recommend that the
22 Commission find probable cause to believe the Committee violated 2 U.S.C. § 441b(a) by
23 accepting corporate contributions; 2 U.S.C. § 441a(f) by accepting excessive contributions;
24 2 U.S.C. § 434(b), and 11 C.F.R. §§ 104.3(a) and (b) by misstating financial activity (overstating

¹ Ms. Terrell started her campaign for the U.S. Senate late in the election cycle. Commission records show that Ms. Terrell filed her Statement of Candidacy and a Statement of Organization for Terrell for Senate on July 16, 2002. Ms. Terrell was a candidate for the primary, general, and runoff elections for the Senate seat. The audit covered the period from July 19, 2002 to December 31, 2002, the total period of Ms. Terrell's 2002 campaign.

² The activity at issue in this matter occurred both prior to and after the November 2, 2002 effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public L. 107-155, 116 Stat. 81 (2002). However, the statutory provisions and Commission regulations at issue were not amended by BCRA in a manner relevant to the activity in this matter.

its ending cash balance and understating total receipts and disbursements); 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(a) by failing to itemize contributions and failing to adequately disclose contributor occupation and employer information; 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and 104.3(a) by failing to disclose joint fundraising proceedings; and 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f) by failing to file 48-hour notices.

II. ANALYSIS

A. The Committee Accepted Corporate Contributions

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits political committees from knowingly accepting contributions from corporations, including limited liability companies ("LLC") that elect to be treated as corporations by the Internal Revenue Service ("IRS"). See 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g)(3). The Commission's regulations establish two possible treatments for contributions by business entities that are recognized as an LLC under the laws of the State in which they are established. See 11 C.F.R. § 110.1(g)(1). The treatment depends on how the entity elects to file with the IRS. *Id.* at 110.1(g)(2). If the contribution is from an LLC filing with the IRS as a partnership pursuant to 26 C.F.R. § 301.7701-3, it shall be treated as a partnership contribution pursuant to 11 C.F.R. § 110.1(e). *Id.* If the contribution is from an LLC electing to file with the IRS as a corporation, the contribution is prohibited. 2 U.S.C. § 441b(a) and 11 C.F.R. § 110.1(g)(3).

The audit revealed that the Committee received 65 prohibited contributions totaling \$64,600 from 47 LLCs and corporations. During the course of the investigation, the Office of General Counsel determined that several of the LLCs in this matter had filed with the IRS as partnerships rather than corporations; however 16 prohibited contributions from corporations

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1 totaling \$29,500 remained. Accordingly, this Office is prepared to recommend that the
2 Commission find probable cause to believe that Terrell for Senate and Justin Schmidt, in his
3 official capacity as treasurer, violated 2 U.S.C. § 441b(a).

4 **B. The Committee Accepted Excessive Contributions**

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6 The Act prohibits political committees from knowingly accepting contributions in excess
7 of the Act's limitations. 2 U.S.C. § 441a(f). During the 2002 election cycle, the Act limited an
8 individual's contributions to a candidate's authorized committee to \$1,000 per election. 2 U.S.C.
9 § 441a(a)(1)(A). The Act also limited a multicandidate committee's contributions to a
10 candidate's authorized committee to \$5,000 per election. 2 U.S.C. § 441a(a)(2)(A).

11 The audit revealed that the Committee received 541 contributions, totaling 531,273, that
12 exceeded the contribution limits of the Act. During the course of the investigation, the Office of
13 General Counsel determined that one of the 541 excessive contributions (totaling \$3,000) was
14 properly attributed, to two contributors, thereby reducing the total number of excessive
15 contributions to 540 instead of 541 and the total excessive amount to \$528,273. Based on the
16 audit and the General Counsel's investigation, this Office concludes that the Committee
17 knowingly accepted 540 contributions totaling \$528,273 that exceeded the Act's limitations.
18 Therefore, this Office is prepared to recommend that the Commission find probable cause to
19 believe that Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, violated
20 2 U.S.C. § 441a(f).

C. The Committee Misstated Its Financial Activity

A political committee is required to disclose the amount of its cash on hand for the reporting period and the calendar year and the total amounts of all receipts and all disbursements in each disclosure report filed with the Commission. 2 U.S.C. §§ 434(b)(1), (2), and (4); 11 C.F.R. §§ 104.3(a) and (b). The audit revealed that the Committee overstated its ending cash balance by \$281,800 and understated total receipts by \$693,576 and total disbursements by \$960,876.³ Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(a) and (b).

D. The Committee Failed To Itemize Contributions

A political committee is required to itemize any contribution from an individual that exceeds \$200 per election cycle either by itself or when aggregated with other contributions from the same contributor. 2 U.S.C. § 434(b)(3)(A). Itemization requires disclosure of the amount of the contribution, the date of receipt, the full name and address of the contributor, the contributor's occupation and the name of his or her employer, and the election cycle-to-date total of all contributions from the same contributor. 11 C.F.R. § 104.3(a)(4)(i). The audit revealed that the Committee failed to itemize all of its contributions from individuals.⁴

A political committee is also required to itemize all contributions from political committees, regardless of the amount. 2 U.S.C. § 434(b)(3)(B). Itemization of a political committee's contribution requires disclosure of the amount of the contribution, the date of

³ Terrell for Senate's 12-Day Pre-Primary Report, October Quarterly Report, 12-Day Pre-General Report, Pre-Runoff Report, Post-Runoff Report, and Year End Report.

⁴ Terrell for Senate's Post-Runoff Report.

1 receipt, the full name and address of the contributor, and the election cycle-to-date total of all
2 contributions from the same contributor. 11 C.F.R. § 104.3(a)(4)(ii). The audit revealed that the
3 Committee failed to itemize 80 contributions from political committees totaling \$134,597.⁵

4 Therefore, this Office is prepared to recommend that the Commission find probable cause
5 to believe that Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, violated
6 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(a).

7 **E. The Committee Failed to Disclose Occupation and Employer Information**
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9 A political committee is required to disclose the occupation and name of employer of
10 each individual whose contribution exceeds \$200 per election cycle either by itself or when
11 aggregated with other contributions from the same contributor. 2 U.S.C. § 434(b)(3)(A) and
12 11 C.F.R. § 104.3(a)(4)(i).

13 The audit revealed that the Committee failed to adequately disclose occupation and name
14 of employer information for 1,173 contributions from individuals totaling \$812,585.⁶ The audit
15 concluded that the vast majority of the contributions (1,080 contributions) were blank or
16 disclosed as "N/A" or "Information Requested." The remaining contributions were disclosed
17 with incomplete information (for example, an employer was disclosed but no occupation). The
18 audit concluded that, though the Committee's contribution solicitations contained a request for
19 occupation and name of employer information, the Committee's records did not contain any
20 follow-up requests for the missing information. Therefore, this Office is prepared to recommend

⁵ Terrell for Senate's Post-Runoff Report.

⁶ Terrell for Senate's 12-Day Pre-Primary Report, October Quarterly Report, 12-Day Pre-General Report, Pre-Runoff Report, and Post-Runoff Report.

1 that the Commission find probable cause to believe that Terrell for Senate and Justin Schmidt, in
2 his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(a).

3 **F. The Committee Failed to Disclose Joint Fundraising Proceeds**

4 A political committee is required to disclose transfers from other political committees,
5 including joint fundraising committees. See 2 U.S.C. § 434(b)(2)(F) and 11 C.F.R.
6 § 102.17(c)(8)(i)(B). Political committees that participate in joint fundraisers are required to
7 report joint fundraising proceeds when such funds are received from the fundraising
8 representative. 11 C.F.R. § 102.17(c)(3)(iii). The participating committee is also required to file
9 a memo on Schedule A itemizing its share of gross receipts from joint fundraising activity as
10 contributions from the original contributors. See 11 C.F.R. §§ 102.17(c)(8)(i)(B) and
11 104.3(a)(4). The audit revealed that the Committee received transfers totaling \$420,500 in net
12 proceeds from joint fundraising activity, \$302,000 of which it failed to disclose in its Pre-Runoff
13 or Post-Runoff Reports.⁷ In addition, the Committee failed to itemize its share of the gross
14 receipts as contributions from the original contributors on memo Schedule A for any of the
15 \$420,500 in transfers of joint fundraising proceeds. 11 C.F.R. § 104.3(a)(4). Therefore, this
16 Office is prepared to recommend that the Commission find probable cause to believe that Terrell
17 for Senate and Justin Schmidt, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and
18 11 C.F.R. §§ 102.17(c)(8)(i)(B) and 104.3(a).

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⁷ The audit concluded that \$396,000 of the joint fundraising proceeds came from Louisiana Victory 2002 Fund, a joint fundraising committee in which the Committee, the National Republican Senatorial Committee ("NRSC"), and the Louisiana Republican Party participated, and that the remaining \$24,500 of the joint fundraising proceeds came from the Terrell Victory Committee, a joint fundraising committee in which the Committee participated with the NRSC.

1 **G. The Committee Failed to File 48-Hour Notices**

2 The principal campaign committee of a candidate is required to file special notices
3 regarding contributions of \$1,000 or more received after the 20th day, but more than 48 hours,
4 before the date of any election in which the candidate is running ("48-hour notices"). 2 U.S.C.
5 § 434(a)(6) and 11 C.F.R. § 104.5(f). The audit revealed that the Committee failed to file 48-
6 hour notices for 77 contributions totaling \$106,100. The audit concluded that the vast majority
7 of the unfiled notices (70 notices) occurred during the runoff election, six related to the general
8 election, and one related to the primary election. Therefore, this Office is prepared to
9 recommend that the Commission find probable cause to believe that Terrell for Senate and Justin
10 Schmidt, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(6) and 11 C.F.R.
11 § 104.5(f).

12 **III. GENERAL COUNSEL'S RECOMMENDATIONS**

- 13 1. Find probable cause to believe Terrell for Senate and Justin Schmidt, in his official
14 capacity as treasurer, violated 2 U.S.C. § 441b(a).
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16 2. Find probable cause to believe Terrell for Senate and Justin Schmidt, in his official
17 capacity as treasurer, violated 2 U.S.C. § 441a(f).
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19 3. Find probable cause to believe Terrell for Senate and Justin Schmidt, in his official
20 capacity as treasurer, violated 2 U.S.C. § 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and
21 104.3(a) and (b).
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4. Find probable cause to believe Terrell for Senate and Justin Schmidt, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f).

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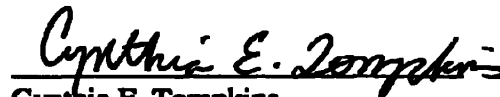
Date



Thomasenia P. Duncan
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Acting Associate General Counsel
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Cynthia E. Tompkins
Assistant General Counsel



Kamau Philbert
Attorney

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